was invalid, the beneficiary named in the first should recover.[4] This result, however, seems unsound. Since a certificate may be surrendered or revoked without a new beneficiary being named,[5] it would seem that when the revocation is once complete all the beneficiaries' rights are forever extinguished, and the issue of any later certificate, whether invalid or not, is immaterial. A recent case reaches this result, holding that when the new certificate is invalid the proceeds should be distributed as though no designation had ever been made. *Grand Lodge, etc.*, v. *Mackey*, 104 S. W. 907 (Tex., Civ. App.).[6] The only possible theory on which a contrary result can be justified is on analogy to the law of dependent relative revocation of wills, where, in certain cases, when an attempt is made to substitute an invalid gift for a valid one, the court will set aside the revocation and allow the old gift to stand. But the better view in such cases is that if the revocation is not really conditional, but absolute, although made because of the desire to change the legatee, the old gift will not be revived unless that result is clearly the intent of the testator.[7] If equity would interfere only in cases where such proof is made, little objection could be made to an extension of the doctrine to the revocation of mutual benefit certificates. For the indiscriminate interference which has confused the law of both subjects there can be no excuse.

CONFLICTING RECEIVERSHIPS. — Recently New Jersey creditors of a New York corporation secured the appointment of receivers for its property by the federal circuit court. Shortly thereafter, the attorney-general of New York instituted proceedings in the state courts to dissolve the corporation, pursuant to statute, because it had been insolvent for a year; and moved for the appointment of receivers for its property, as permitted by statute in such proceedings. The court, following Mr. Alderson's work on Receivers, granted the motion, but, though it believed its receivers entitled to possession, instructed them in deference to a spirit of comity not to molest the federal receivers, and to request the federal court to relinquish control. *People* v. *N. Y. City Ry.*, 107 N. Y. Supp. 247. The moderate form of this decree reaches a proper result,[1] but it is believed that the attitude of the court was wrong both in its reasoning and on authority. The inviolability of property in the hands of a receiver appointed by a court of competent jurisdiction is well settled.[2] In the present case the court admitted that there were facts sufficient to give either state or federal court jurisdiction, and that when two courts have concurrent jurisdiction of a controversy, the assumption of jurisdiction by one court excludes the other. It went on, however, to quote a dictum of Mr. Justice Bradley: "But where the objects of the suits are different, this rule does not apply, although the thing about or in reference to which the litigation is had is the same in both cases."[3] It then pointed out that the suit in the federal court was to continue the exist-

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[4] Grace *v.* N. W., etc., Ass'n, 87 Wis. 562; Smith *v.* B. & M., etc., Ass'n, 168 Mass. 213.

[5] Cullin *v.* Knights of Maccabees, 77 Hun (N. Y.) 6.

[6] Accord, Carson *v.* Vicksburg Bank, 75 Miss. 167.

[7] See Tupper *v.* Tupper, 1 Kay & J. 665.

[1] State *v.* Port Royal, etc., Ry., 23 S. E. 363, 368; aff. 45 S. C. 413; *ibid.* 470.

[2] *In re* Tyler, 149 U. S. 164; O'Mahoney *v.* Belmont, 62 N. Y. 133, 149. See 17 HARV. L. REV. 196.

[3] Wilmer *v.* Atlantic, etc., Ry., 2 Woods (U. S.) 409, 425.

ence of the corporation, while that in the state court was to terminate it. Therefore, the court argued, this case came within the exception and not the rule, and consequently the federal court's jurisdiction of the property was not exclusive. The reading of the entire decision from which the court quoted demonstrates that it completely misunderstood and misused the words it borrowed. There the question before the state court was the validity of a sale, and that before the federal court the rights of bondholders. When the federal court discovered that the state receivership was prior in time, it refused a writ of assistance to its own receiver. After laying down the rule and exception above stated, it pointed out that since the questions before the courts were different, there was no conflict of jurisdiction as to the question, and both suits could go on. Then it proceeded to show that as to the *res* there was a conflict, and decided that the court first getting jurisdiction over that could keep it. The distinction between conflict of jurisdiction as to the question and as to the *res*, which here escaped the New York court, has frequently been taken.[4] It is undoubtedly established that the court first acquiring jurisdiction over the *res* draws to itself the exclusive right to dispose of it for the purposes of the litigation then before it.[5] Even willingness of the receiver to surrender the *res* is immaterial,[6] since the property in fact is in the hands of the court. The courts say that where either state or federal court appoints a receiver, the result as to the other is as if the *res* were removed to another territorial sovereignty.[7]

Another argument of the court in support of its view was that, since the corporation is the creature of the state, the federal court by appointing a receiver cannot prevent the state from dissolving it. As already shown, the state may proceed with its dissolution suit, since that is different from the suit before the federal court. The possession of the property of the corporation may be desirable in such a proceeding, but it is not necessary. The inconvenience thus resulting is merely one of the many attendant upon divided jurisdiction. Furthermore, the court is not supported by the cases cited, except one passing dictum.[8] In fact, unnoticed by the court there is authority opposed to its contention.[9]

RIGHTS OF SECURED CREDITORS UPON INSOLVENCY OF THE DEBTOR OR HIS ESTATE. — The rights of a secured creditor against an insolvent debtor may be adjusted in one of two ways: either he may be required first to exhaust his security and credit the proceeds on his claim; or he may be allowed to recover a dividend on his full claim and resort to his security for

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[4] De La Vergne, etc., Co. *v.* Palmetto, etc., Co., 72 Fed. 579; Metropolitan Trust Co. *v.* Lake, etc., Ry., 100 Fed. 897.

[5] Shields *v.* Coleman, 157 U. S. 168; Mil. & St. P. R. R. *v.* Mil. & Minn. R. R., 20 Wis. 165. This principle is also applied in analogous cases: property in receiver's hands subject to a maritime lien cannot be disturbed. See Moran *v.* Sturges, 154 U. S. 256; nor taken by eminent domain, Western, etc., Co. *v.* Atlantic, etc., Co., 7 Biss. (U. S.) 367. See also Heidritter *v.* Elizabeth, etc., Co., 112 U. S. 294; State *v.* Marietta, etc., R. R., 35 Oh. St. 154.

[6] The E. L. Cain, 45 Fed. 367.

[7] *In re* Tyler, *supra*, 186; The E. L. Cain, *supra*, 369.

[8] Petition of Kittanning Ins. Co., 146 Pa. St. 102, 105.

[9] Lake, etc., Co. *v.* Brown, etc., Co., 44 Fed. 539, aff. *sub nom.* Leadville Coal Co. *v.* McCreery, 141 U. S. 475; Mercantile Trust Co. *v.* Missouri, etc., Ry., 48 Fed. 351. The federal receiver is not even a necessary party to the state's dissolution suit. City Water Co. *v.* Texas, 88 Tex. 600.